

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH E. BERRY,

Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF CORRECTIONS
and CCO RUSSELL ALFARO,

Defendants.

Case No. C10-5078BHS/JRC

ORDER EXTENDING BRIEFING
DEADLINE AND CONTINUING
DEFENDANTS' SUMMARY
JUDGMENT

Noted for December 10, 2010

This 42 U.S.C. § 1983 civil rights action has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. This matter is before this court on defendants' Motion for Summary Judgment. (ECF No. 16). Subsequent to defendants' filing of their Motion for Summary Judgment, plaintiff filed a Statement of Case and Issues (ECF No. 21), and wrote two letters to the court (ECF Nos. 23, 26). On September 23, 2010, defendants filed a Reply in support of their Motion for Summary Judgment. (ECF No. 22). On November 12, 2010, plaintiff

REPORT AND RECOMMENDATION- 1

1 filed Plaintiff's Status Report (ECF No. 28) and an untimely Response to defendants' Motion for
2 Summary Judgment (ECF No. 27).

3 DISCUSSION

4 The court "must 'liberally construe the 'inartful pleading' of pro se litigants'". Plasencia
5 v. Carnevale, 2007 U.S. Dist. LEXIS 57209 at *4 (D. Ore. 2007) (*quoting* Eldridge v. Block, 832
6 F.2d 1132, 1137 (9th Cir. 1987) (*citing* Boag v. MacDougall, 454 U.S. 364, 365 (1982))). It is
7 especially important to apply this rule of liberal construction in civil rights cases. Plasencia,
8 2007 U.S. Dist. LEXIS 57209 at *4 (*citing* Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir.
9 1992) (*citing* Eldrige, 832 F.2d at 1137)).

11 Defendants' Motion for Summary Judgment was filed on August 30, 2010. (ECF No.
12 16.) Pursuant to this court's scheduling order, plaintiff's Response was due on September 20,
13 2010. (See ECF No. 9, p. 2.) On September 21, 2010, plaintiff wrote a letter to the court stating
14 that "I have no access to [the] law library, I can't get any copies, nor pens to write with . . . I
15 have a case I need to file, but have no means, please help." (ECF No. 23, filed on September 24,
16 2010.) On November 2, 2010, plaintiff wrote another letter to the court, stating that he is
17 "delayed because of the law library pro se policy. They don't have books, typewriters, printers
18 [or] case log ECF . . . you can't get copies if you had moneys within 30 days, and you have
19 to have moneys to send out mail . . . I'll be putting plaintiff status report and amend motion
20 within the next 2 weeks." (ECF No. 26.) In addition, plaintiff filed Plaintiff's Status Report on
21 November 12, 2010. (ECF No. 28.) In his status report, plaintiff states that he has "been moved
22 from jail to jail, without the means to respond due to the fact that the jails' law library hinders
23 inmates to make an effective case and response. [Washington Correctional Center] told
24 inmate/plaintiff he couldn't find a deadline on the computer, so [plaintiff] was denied unlimited
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1 access to the law library. Yakima County Jail would not let plaintiff to their so-called law
 2 library. Also, [Yakima County Jail] would not make copies nor send out big mail At
 3 [Pierce County Jail,] they too are hindering inmates that [are] pro se. The material in the law
 4 library is limited. No typewriters, printers, books, nor forms, and case log. [It] also takes up to a
 5 week to get copies.” (Id.)

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 7 Plaintiff’s filings include his statements that “I have a case I need to file, but have no
 8 means, please help” (ECF No. 23), and “I’ll be putting plaintiff status report and amend motion
 9 within the next 2 weeks.” (ECF No. 26.) Plaintiff also contends that he has “been moved from
 10 jail to jail, without the means to respond.” (ECF No. 28.)

11 Because the court “must ‘liberally construe the ‘inartful pleading’ of pro se litigants,’”
 12 especially in the context of civil rights cases, Plasencia, 2007 U.S. Dist. LEXIS 57209 at *4, the
 13 court deems plaintiff’s request for help and his filings (see ECF Nos. 23, 26, 28) as a Motion for
 14 Extension, and hereby grants the Motion for Extension. Cf. United States v. O’Malley, 1986 U.S.
 15 Dist. LEXIS 16390 at *3 (N.D. Ill. 1986) (“[t]he court deems the request as a motion for an
 16 extension of time[,] and that is granted). Therefore, the court concludes that plaintiff’s
 17 Response is properly is part of the record. (See ECF No. 27.)

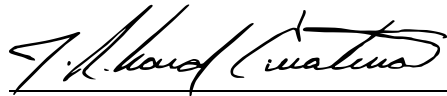
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 19 Although defendants have filed a Reply (ECF No. 22), they have not had an opportunity
 20 to reply to plaintiff’s Response (ECF No. 27). Therefore, defendants shall have until **December**
 21 **9, 2010** to file any supplemental Reply, but is not required to do so.

22 23 CONCLUSION

24 Based on the above discussion, the court deems plaintiff’s request for help and his filings
 25 as a Motion for Extension, (see, e.g., ECF No. 28), and grants the Motion for Extension.
 26 Defendants may file any supplemental Reply on or before **December 9, 2010**.

1 The clerk is directed to set the matter for consideration on **December 10, 2010**, as noted
2 in the caption.

3 Dated this 1st day of December, 2010.

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6 J. Richard Creatura
7 United States Magistrate Judge
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